

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.31557 of 2012

ORDER:

This writ petition filed under Article 226 of the Constitution of India challenges the action of the Panchayat Secretary of the 3rd Respondent Gram Panchayat in interfering with the petitioner's property admeasuring 673 sq.yards bearing Plot Nos.150, 151 and 152 in Survey Nos.57 and 58 in L.P.No.13 of 1978 of Sarpavaram village, Kakinada Rural Mandal, East Godavari district.

2. Heard Sri S.Subba Reddy, learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj for Respondents 1 and 2 and Sri Ravi Cheemalapati, learned Sanding Counsel for Respondent No.3, apart from perusing the material available on record.

3. The petitioner herein claims to be the absolute owner of property admeasuring 673 sq.yards bearing Plot Nos.150, 151 and 152 in Survey Nos.57 and 58 of Sarpavaram village, Kakinada Rural Mandal, East Godavari district, having purchased the same by virtue of registered document bearing No.315/01 dated 30.5.2001 for valuable consideration. It is further pleaded in the writ affidavit that ever since the date of purchase, the petitioner herein has been in peaceful possession of the said property with absolute rights. It is averred in the writ affidavit that originally the land admeasuring Ac.3.00 was owned by four persons namely, Kilambi Jaya Lakshmi, M.Paghava Kumari, I.Amrutham and V.Satyavani, who got the said property under registered gift deeds of the years 1955 and 1960. It is further stated that subsequently the said persons along with neighbours divided the land into house plots and got the layout approved by the Gram Panchayat in 1978 and as per the layout, the land in Survey Nos.57 and 58 was divided into 152 plots with different measurements. As stated supra, the petitioner herein claims to have purchased the above mentioned property in

the year 2001 from the GPA holders of the above said persons and constructed a small thatched shed therein. It is alleged in the writ affidavit, the 3rd respondent came to the subject site in the last week of September, 2012 and tried to interfere with the petitioners' possession over the property and thereafter, petitioner met the Panchayat Secretary and questioned about the said high handed action and in reply, he stated that the petitioner would be dispossessed from the site, while stating that the plots purchased by the petitioner and some other persons fall under common site demarcated in the layout. It is also alleged in the writ affidavit that the petitioner came to know that the 3rd respondent in collusion with some other persons, is trying to dispossess him from the subject property. According to the petitioner, layout was sanctioned as long back as in the year 1978 as per the rules framed under G.O.Ms.No.377 dated 12.10.1973, 5% of the land was kept as open site as per Rule 3(b) of the said rules. It is further stated that since the total area is Ac.14.42 cents, a total area of Ac.0.72 cents was left for common use and the said area still continues to be as open space. Pleading in the manner indicated supra and alleging interference of 3rd respondent with the possession and enjoyment of the petitioner, the present writ petition came to be filed.

4. This Court, while ordering notices on 8.10.2012, passed interim order in W.P.M.P.No.40250 of 2012 and the said order reads as under:

“The documents of title of the petitioner, copy of layout and encumbrance certificate, prima facie, corroborate the claims of the petitioner and therefore, both parties shall maintain status quo as on today in respect of the subject property until further orders.”

5. Resisting the averments in the affidavit filed in support of the writ petition, a counter affidavit deposited by the Panchayat Secretary of 3rd respondent Gram Panchayat is filed and the said counter affidavit seeks to justify the impugned action. In the said counter affidavit, it is stated that the common area in the

layout do vest in the Gram Panchayat as per G.O.Ms.No.67 dated 26.2.2002 and as per the instructions of the State Government in G.O.Ms.No.188 dated 21.7.2011, it is the duty of the Executive Officer of the Gram Panchayat to protect the common sites and water bodies etc., and in view of the same, the 3rd respondent has erected a board in the common site of the layout in Sy.No.57, warning the public, that the encroachers of the common site would be punished according to G.O.Ms.No.188 dated 21.7.2011. It is further stated that the common site in the subject layout is 600 sq.yards and is in possession of the Gram Panchayat and the name of the petitioner is neither recorded in the Gram Panchayat records nor in the revenue records, evidencing the purchase made by the petitioner herein. It is further stated that the petitioner herein can be treated as encroacher and the petitioner approached this Court with unclean hands and he needs to prove his title by approaching Civil Court.

6. Taking objection against the averments in the counter affidavit, a reply affidavit is also filed by the writ petitioner.

7. It is contended by the learned counsel for the petitioner that the action impugned is highly illegal, arbitrary and unreasonable and violative of Articles 14 and 300-A of the Constitution of India. It is further submitted that the land of the petitioner is not located in the common site as alleged and the petitioner herein is not an encroacher and on the other hand, he is bonafide purchaser for a valuable consideration under registered sale deed. It is further submitted by the learned counsel for the petitioner that the 3rd respondent, in the event of disputing the title of the petitioner, is required to establish the title of the 3rd respondent in proper forum of law and cannot interfere with the possession and enjoyment of property of the petitioner in view of documents available on record and that the impugned action is contrary to A.P. Panchayat Raj Act and the Rules made thereunder.

8. On the contrary, it is vehemently contended by the learned Standing Counsel for Respondent No.3 that there is no illegality nor there is any infirmity in the impugned action and the 3rd respondent is perfectly justified in his actions as indicated in the counter affidavit and the petitioner herein is required to approach Civil Court to establish his title and he is not entitled for any relief from this Court under Article 226 of the Constitution of India.

9. In the above backdrop, the question that arises for consideration of this Court is whether the action on the part of the 3rd respondent is sustainable and tenable and whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India.

10. In order to establish prima facie title to the property, petitioner herein filed copy of the registered sale deed dated 30.5.2001 bearing Document No.315/01. Schedule of the said document indicates Plot Nos.150, 151 and 152 admeasuring 673 sq.yards within the boundaries mentioned therein. The Encumbrance Certificate dated 11.9.2012 issued by the office of District Registrar, East Godavari for the period from 1.1.1983 to 30.9.2007 indicates the name of the petitioner herein. The counter also does not dispute the layout plan bearing No.13/78 dated 15.7.1978. In fact, a copy of the said layout plan is also filed along with the writ petition as material paper, which clearly indicates that the area covered by Plot Nos.150, 151 and 152 do not fall under open space. Therefore, by any stretch of imagination, it cannot be said that the petitioner herein is an encroacher of the common site demarcated in the layout. In this context, it may be appropriate to refer to the judgment of the Apex Court in Government of A.P. v. Thummala Krishna Rao¹. The said case arises out of A.P. Land Encroachment Act, 1905. In the said judgment, the Hon'ble Apex Court at paragraph 7 categorically held that if there is a bonafide dispute with regard to title, the Government cannot take unilateral decision in its favour on

¹ AIR 1982 1081

the property belong to it and basing on such decision, cannot take recourse to summary procedure. In the instant case, the documents referred to supra, prima-facie show the title of the petitioner to the said property bearing Plot Nos.150, 151 and 152 and the layout plan also clearly discloses that the said plot numbers do not fall under common site or open space as stated in the counter of the 3rd respondent herein. Article 300-A of the Constitution of India mandates in clear and unequivocal terms that no citizen of this country shall be deprived of his/her property, except in accordance with the procedure established by law and the authorities are required to adhere to such mandate while dealing with valuable rights of the citizens.

11. For the aforesaid reasons and having regard to the law laid down in the above referred judgment, this writ petition is allowed, directing the Panchayat Secretary-3rd respondent not to interfere with the petitioner's property admeasuring 673 sq.yards bearing Plot Nos.150, 151 and 152 in Survey Nos.57 and 58 of Sarpavaram village, Kakinada Rural Mandal, East Godavari district. As a sequel, the miscellaneous petitions, if any shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 1.12.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.31557 of 2012



1.12.2016

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